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WHY LEGISLATION IS NOT ENOUGH

Researcher **Lorena Fuentes** examines femicide and gender-based violence in Guatemala.

Femicide – the killing of women where signs of rape, torture and extreme cruelty are evident.¹ It is widespread in Central America and Mexico, and it is also found in other post-conflict societies such as South Africa. It is rare to see a case of femicide where the element of sexual violence is absent, and those most at risk come from backgrounds already deeply marginalised on account of their race or ethnicity and their poverty.

This case study aims to highlight the problem of femicide and other forms of systemic violence that have a devastating impact on young women and girls in Guatemala. It lays out the emergent institutional and legal framework designed to protect women and girls' human rights and outlines some of the important advances that it entails in breaking the silence and impunity around gender-based violence. The limitations of this framework for transforming structurally embedded norms and inequalities are also discussed, along with some recommendations being advanced by girls' and women's rights groups for targeting the institutional and cultural networks that help support this violence.



Introduction: The scale of the problem

While violence against young women and girls, as well as generalised violence, is hardly a new development in Guatemala, last year saw a rise in the indicators of violent killings of women and children, as well as acts of sexual violence and abuse: 755 women and 86 children and adolescents were killed as a result of violence – which respectively constitutes a 6.78 and 10.49 per cent increase on the figures from 2012.^{2,3}

Additionally, between January and October there were reportedly 5,832 sexual crimes committed – of which 5,247 were perpetrated against women.⁴ And, in a worrying start to the year, in January 2014, 61 women were killed, of whom 49 per cent were between the ages of 16 and 30.⁵ Compounding these shocking statistics is the fact that in the overwhelming majority of these cases, the perpetrators literally get away with murder.

As a matter of both moral urgency and international law, the Government of Guatemala must demonstrate its political will to eradicate femicide and commit the necessary resources to ensure that young women and girls' right to a life free from violence, discrimination and poverty is not just an abstract entitlement, but a reality.

Histories of violence haunting the present

We can only begin to develop an understanding of the problem of femicide and widespread forms of violence against women and girls by situating it against the backdrop of Guatemala's legacy of violence and internal armed conflict.

A United Nations Commission established at the end of the war in 1996 outlined the systemic nature of the sexual violence perpetrated against women and girls of mostly indigenous Mayan descent. The testimonials in their report highlighted how rape and other forms of gender-based violence were used as weapons of war by the State and military apparatus as part of a counter-insurgency strategy that amounted to genocide.⁶ Of the estimated 50,000 victims of sexual violence, *not a single perpetrator has been brought to justice*. The impunity for sexual crimes committed during the war has contributed to the institutionalised acceptance and cultural normalisation of 'post war' violence against women and girls across public and private spheres of Guatemalan life.



Women in Guatemala City demonstrate against violence.

LORENA FUENTES

In several important ways, the war has not ended in Guatemala – particularly where women and girls are concerned. The signing of the Peace Accords did not remove the deeply embedded structures of racial, gender and class inequality, nor the institutional and cultural impunity for violence. In the absence of meaningful reforms that would address the distribution of wealth and strengthen the rule of law, Guatemalan society has become characterised by increases in organised crime, gang violence, and trafficking in drugs and humans – all of which bear enormous consequences for the human rights of girls and young women.

The cultural and institutional denigration of women and people of indigenous Mayan descent, coupled with the resistance to prosecuting crimes against minors, produces a particularly dangerous situation for upholding the human rights of those most in need of their protection in Guatemala. Young women and girls, especially those who are doubly and triply marginalised on account of their racial background and poverty, are at heightened risk of forms of social and gender violence. Femicide and sexual violence therefore constitute the extremes of a continuum of violence suffered by young women and girls in Guatemala that includes more subtle forms of discrimination such as a systemic lack of access to education, health and nutrition.

Breaking the silence: developing a legal and institutional framework

On 9 April 2008 after sustained lobbying from women's and human rights groups in the country, a comprehensive Law Against Femicide (Decree 22-08) was passed by Congress – legally codifying femicide and other forms of violence against women and girls such as sexual, psychological and economic violence. The law defines femicide as an act committed by an individual who "in the context of unequal relations of power between men and women, kills a woman" and is punishable by 25 to 50 years in prison.

- Decree 22-08 added to a growing framework for the legal typification of women and girls' rights to be free from violence and discrimination that started with The Law to Prevent, Sanction, and Eradicate Domestic Violence (Decree 97-96, 1996) and The Law for the Comprehensive Protection of Childhood and Adolescence (Decree 27, 2003).
- One of the strongest components of the Femicide Law is that it calls for the creation of specialised institutional bodies to provide integrated support to women and girls victimised by gender-based violence.
- The Law also spearheaded the creation of the first national courts in the world specialised to judge femicide and domestic violence cases. There are currently specialised courts in five districts of Guatemala, and in most cases the judges are female and have undertaken sensitivity training on gender violence.⁷
- Furthermore, with the support of the Public Ministry, specialised defence units for women and children have been created and comprehensive care centres have been set up for victims of gender violence – these include 24-hour access to teams of legal, medical, psychological, police and social support.

The 2008 Law entailed a crucial step forward in naming and outing the specific problem of femicide and other forms of violence against women and girls, as well as explicitly outlining the role of the State and its institutions in developing effective responses. These are all important achievements, but there is still a long way to go before femicide and violence against women and girls is eradicated.

Justice out of reach: the limits of law to challenging structural violence

Despite the progressive nature of this legal framework, the gap between law and justice continues to be particularly wide where young women's and girls' rights are concerned. Since the Law was passed in 2008, femicide and sexual violence against young women and girls continues to increase, impunity for these acts remains nearly absolute, and many of the provisions of the Law have yet to be fully implemented.

- a. Despite the creation of the specialised femicide and domestic violence courts, they have only been effective in prosecuting and convicting perpetrators in 22 per cent of cases (and the rate is even lower in non-specialised courts). Women's and children's rights observers note that the real struggle lies in changing the perceptions of society and the people who are actually charged with operationalising the laws – such as judges and prosecutors. As one commentator emphasised, two weeks of training on gender violence will make little difference to the perceptions of a judge who has entrenched misogynistic views.⁸
- b. A further problem is how difficult it is for young women and girls actually to access the legal and justice mechanisms outlined in the law. There is insufficient knowledge about the existence of the Femicide Law in the first place, and in-country activists insist that information about women and girls' rights is sorely lacking in spaces such as schools and hospitals where it would be most useful. Guatemala is a country with 22 regional districts, and yet there are currently only five specialised courts.
- c. Even more problematic is that many young women and girls lack Spanish literacy.⁹
- d. Protection of victims of violence and witnesses is poor, which leaves women and girls as well as victims' families exposed to further violence. This lack of integrated support means that the incentive to pursue justice is extremely low.

Another limitation is that the Femicide Law is largely based on *responding* to violence that has already occurred through prosecution and punishment; and while this is an important step in a country rife with impunity, it leaves the element of prevention inadequately addressed. Targeting the values that perpetuate and normalise violence against women and girls in private and public domains requires that the State support initiatives that aim to prevent violence before it occurs or prevent re-victimisation.¹⁰

WOMEN CHANGING THE WORLD: AN EXAMPLE OF BEST PRACTICE¹¹

One organisation that is offering a strong model of integrated holistic support to women and girls who are victims of violence is Women Changing the World. In addition to providing legal accompaniment and multi-disciplinary psychological and social support, they have developed a programme of mutual group support for girls and young women who have suffered from sexual abuse and other forms of violence. The organisation uses an innovative gender-justice model to help participants transform themselves from victims to survivors, to holders of human rights. By extending the model of support offered to girls beyond the legal stage of denouncing and prosecuting, this type of intervention works across the spectrum by trying to prevent further violence and promote self and group awareness of their rights.¹² Women Changing the World has developed alliances with other organisations working to protect young women's and girls' right to live free from violence; but the ongoing problem is a lack of adequate funding and State support, as well as resistance to these type of initiatives promoting women and girls' rights.



Beyond the law: the role of education and media in promoting and protecting girls' rights and preventing violence and femicide¹³

Ideas that normalise and justify violence are not changed overnight. In addition to robust laws which punish perpetrators and protect victims, interventions in the spaces where ideas about women and girls are reproduced – such as schools and in media representations – are required if there are to be genuine paradigm shifts towards a society that has zero tolerance for violence against women and girls. In order to extend the focus to *preventing* femicides and other forms of violence, the State must demonstrate its political will by increasing resources and support to those organisations that are already working on the issue.



'One Billion Rising for Justice' – Women demonstrate against violence.

Specific recommendations

- **Gender-sensitive and rights-based education:** the State must allocate sufficient funding to the Ministry of Education targeted specifically so that schools can develop rights-based campaigns and curricula that educate and address issues of gender inequality and violence. Particular focus should be given to ensuring that programmes designed to empower girls are sensitive to language barriers and reach outside regional districts. These programmes should be undertaken with the guidance of women and girls' rights groups and advocates in Guatemala and in the region.
- **Monitoring and regulation of media reporting:** views that promote victim-blaming in cases of violence and sexist attitudes towards young women and girls must be rejected through regulatory frameworks that take into account the socio-cultural context of unequal power relations as outlined in the Law Against Femicide. Attention should also be given to sensitising media depictions of violence and femicide, and steps should be taken to outlaw the publication of photos of corpses, which constitute a violation of the rights of victims and their families.¹⁴
- **Extending gender-violence training for operators of justice:** training of judges and public prosecutors should not be limited to specialised courts and teams dedicated to cases of gender-

based violence and femicide, but should be extended to all operators of justice.¹⁵ Expanding gender-sensitisation programmes across the justice sector and within the national and municipal police service can help break down the norms and attitudes that normalise violence against women and girls; and help prevent cases of domestic and sexual violence from resulting in femicides by taking initial reports of violence seriously.

- **Supporting the work of women's and girls' rights groups:** the State must increase funding for organisations such as Women Changing the World that are working to protect women and girls' rights.¹⁶ It should work in collaboration with these organisations to extend and promote examples of best practices in providing care and support to girls victimised by violence so that fewer cases of domestic and sexual violence result in femicides.

The State of Guatemala must treat femicide and violence against women and girls with the urgency it demands. In addition to fully implementing the existing provisions within the law against femicide, interventions at the level of education and the media, like those outlined above, can help to prevent violence against women and girls, to build a society where it is neither justified nor acceptable, and where perpetrators are brought to justice.